



Republican Policy Committee

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Justice Delayed & Replayed: One Family's Agony

"Habeas corpus is a people issue. It's a victim issue. It is about victimization and re-victimization. Habeas corpus is about murder and murder's victims. Habeas corpus cuts deep. Blood runs. For those who are surviving family members of murder victims, habeas corpus means no closure to our grief, no finality of judgment, unconscionable delays, and unremitting pain."

Student Murdered

Marcus Chancellor was a 20-year-old student preparing to depart for Australia where he would live for a year. He was postponing his education to take advantage of his last year of airline pass privileges which he enjoyed as the son of a commercial airline pilot.

Marcus Chancellor never made it to the airport. He was murdered on February 10, 1978 by a man who learned that Marcus was carrying \$1,000 to purchase camping equipment. Marcus was lured to a remote beach where he was bludgeoned with a pipe and robbed. He was struck so many times and so violently that every bone in his head was broken.

The murderer's wife led police to the murder weapon, and she offered to testify against her husband. The defendant was charged with murder in the first degree, with special circumstances (murder to silence a witness to a robbery), and the death penalty was sought.

A Plea Bargain & the Endless Appeals

On the first day of jury selection, however, the murderer offered to plead guilty to first degree murder in exchange for a sentence of life in prison *with* the possibility of parole. The family of the victim was vehemently opposed to the offer, but the prosecutors accepted it.

Since then, nine parole boards have reviewed the murderer's potential for release and found him unsuitable in each instance. During this time, new facts emerged regarding the murderer's involvement in a prior murder in Florida. The murderer began filing habeas petitions in state courts. His petitions were denied by each of the state courts, including the California Supreme Court. In the fall of 1992, he filed a habeas petition in federal court. He is re-litigating what has already been fairly heard and fully determined in the state courts.

A Father's Plea for Common Sense

Marcus Chancellor's father, who has seen the process first-hand, has made the following criticism of habeas corpus procedures:

"I am a retired military and commercial airline pilot. When a pilot is released from the gate, he is totally responsible for the aircraft and for the lives on board. He is expected to depart with the necessary knowledge and procedures firmly in mind. He cannot turn to the co-pilot and the first officer and ask their opinion of what must be done to operate safely. In the event of an emergency, it is the captain's responsibility to execute all procedures and make judgments to save lives and to return everyone to earth safely. We operate the cockpit from memory, and we back up every movement of the flight with a check list. The check list is only to assist the memory. It is not the primary operating guide. . . .

"President Kennedy once said that America must set the goal of landing a man on the moon and returning him safely to earth. We designed, constructed, and tested a suitable space craft. Crews were trained, and the mission was successfully completed in less than a decade — less time than it takes for the American judicial system to determine the average capital case.

Why the Delay? Why the Repetition?

"Why can't judges, state and federal, read a ten thousand page record in a capital case one time, identify the errors or flaws, if any, and render a final opinion? If necessary, they could use a check list. Most judges I have met have graduated in the top 20 or 30 percent of their class and should easily accomplish this task.

"Please explain to me why a murder case must be submitted to the federal court three and four separate times for habeas review, or why it must be held in the court's 'in' basket for months and months on end.

"My company would have fired me the first time I pushed back from a gate and then asked to be tugged back to further review my departure procedures. The abuse of habeas corpus in both capital and noncapital cases has seriously undermined the public's confidence in the judicial system. The public simply does not understand why it can take eight, 10, or 14 years to reach a final decision.

Congress Can Give Victims Some Finality

"The proposals for habeas corpus reform that are now before Congress will do much to restore public confidence. It is essential that reform eliminate unnecessary delay and repetitive litigation. While there must be a fair opportunity for a convicted murderer to present his appeal, there also must be finality of judgment. *The lack of finality under current law means the survivors of murder victims cannot finish grieving. There is no closure, only perpetual pain, intense pain, pain that cannot be overcome.*"

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[This paper is an edited version of the March 1995 testimony to the Senate Judiciary Committee of Mr. Lee Chancellor. The quotation under the title is from Jack Collins, a friend of the family.]